I would, however, emphasize that this suit is against a firm and not against two or more individual members constituting a firm. In such a case and on different facts, such a doctrine might not apply.

It was, however, argued that the deposit receipt clearly showed that it was not the deceased's own money that was advanced, but without deciding this point it is equally clear, from the endorsement, that the firm treated it as a loan by the deceased and included it as an item in the partnership accounts and assets.

There is no evidence whatsoever as to the loan being made out of funds belonging to a charity established by the deceased and it may very well be one of those nebulous charities which are so often formed as a means of creating hidden reserves. In any case it is, in my opinion, immaterial whether such is the case or not, the loan was made by the deceased to the firm and treated as such by the firm. As already stated, a suit for an account having already been successful and an order made thereon, I hold that this suit is not maintainable by the plaintiff and such must therefore be dismissed.

As regards the costs, I have, so far, made no order in respect of the costs in either suit and although at the moment I can see no reason why costs should not follow the event on both decisions, I am prepared to hear counsel thereon.

Suit dismissed.

[ORIGINAL CIVIL JURISDICTION]

GORDON-SMITH, J.

March 15, 1940.

R. M. A. T. M. MEYAPPA CHETTIAR

vs.

THE FEDERATED MALAY STATES.

[PERAK ORIGINATING SUMMONS No. 242 of 1937]

Estate Duty Enactment (Cap. 136), sections 3, 6, 17 and 37—Rules for regulating procedure under section 37—Joint Hindu Family—Share in partnership in name of Karta belonging to family—Interest of minor son therein—Charity—Gift to—Share of, in partnership—Liability under section 17.

Ramasamy Chettiar founded the money lending business of "R.M.A.T.M." and died in 1916 leaving three sons, namely Periya Meyappa, Chinnah Meyappa (hereinafter called the deceased) and Supramaniam, who continued to carry on the business. Periya Meyappa died in 1919 leaving a son, Ramanathan. In 1931 disputes arose, which were settled by the division of the share-capital of the business which stood in the vilasam of "R.M.A.T.M." into three equal parts, which were then entered under the vilasams of "R.M.M.", representing Periya Meyappa, "M.R.M.M.", representing the deceased, and "R.M.S.P.", representing Supramaniam. The remaining portion of the share capital was entered in the name of "Pasumadam Charity", while the accretions or profits accruing on this portion of the capital were credited to the same name.

The Collector of Estate Duty, in assessing the estate duty of the deceased (a) disregarded "Pasumadam Charity" as owning any interest or share capital in the business, with the result that the share of the deceased was assessed on the basis of being one-third of the whole business: (b) disregarded the accretions or profits in the name of "Pasumadam Charity" as a liability of the business: and (c) treated the whole of the share capital standing in the vilasam "M.R.M.M." as liable to duty in respect of the estate of the deceased.

The plaintiff objected to this basis of assessment on the grounds (a) that the "Pasumadam Charity" related to existent entities to whom a complete gift or effective declaration of trust of share capital, and therefore of consequent accretions or profits, had been made: and (b) that the deceased and his son (who was also named Meyappa) constituted a Joint Hindu Family; that the share of the business standing in the vilasam "M.R.M.M." was the property of this family; and that on the death of the deceased only one-half of this share was subject to Estate Duty.

At the hearing of the application, the plaintiff asked for leave to amend the originating summons:

Held, that upon a true construction of Rule 4 of the Rules regulating the procedure under section 37 of the Estate Duty Enactment (I Allen p. 82) subject to the power of the Court to allow an amendment the applicant shall not in his Originating Summons state, nor at the hearing thereof be allowed to rely upon any grounds of appeal not specifically set forth in the written statement of grounds given to the Collector under Rule 1.

Held further, that the mere transfer of moneys into the name of a charity in the books of a Chettiar firm did not constitute an effective gift to the Charity. [**State of Perak v. P.R.A.L.M.M. Muthukaruppan Chettiar**(1) followed].

Secondly that there was no evidence upon which it could be contended that there was an effective trust in favour of the Charity. Thirdly that there was no evidence of any agreement constituting the Charity a partner in the business. And lastly there was no evidence that the share capital was contributed by the Charity, and consequently any claim to treat the amounts credited to the Charity as a liability did not come, as it must if it is to succeed, within section 17 of the Estate Duty Enactment. Furthermore the Charity is resident outside the Federated Malay States, and such a claim fails under subsection (2) of the same section.

And held further, that, the son of the deceased being a minor and there being no evidence that he had been admitted to the benefits of or to the partnership, he had no interest in the share in the partnership standing in the vilasam of "M.R.M.M.", other than such interest as he may have possessed by virtue of being a member of a Hindu Joint Family. The deceased, as head or Karta of the family, had certain exclusive rights over such share, his actions in accordance therewith being binding upon the family. He is a person competent to dispose of property as described by section 3 of the Estate Duty Enactment. He is also a trustee of the family property, which passes on his death unless the trust property has been dealt with as set out in the **proviso** to section 6 of the Estate Duty Enactment.

Cases referred to:—

(1) *State of Perak v. P.R.A.L.M.M. Muthukaruppan Chettiar,* 7 M.L.J. 247; (1938) F.M.S.L.R. 154.

(2) *In re Scott,* (1900) 1 Q.B. 372.

(3) *In the matter of the duty on the estate of Col. G. A. Vernon,* (1901) 1 Q.B. 297.

(4) *Grande Gangayya v. Grande Venkataramiah,* 41 Mad. 454.

(5) *R.M. PL. N. Nachiappa Chettiar v. K. AL. KR. Karuppan Chettiar & Ors.,* 8 M.L.R. 217; (1938) F.M.S.L.R. 132.

(6) *Mohori Bibee v. Dhurmodas Ghose,* 30 I.A. 114.

(7) *Annamalai Chetty v. Murugasa Chetty,* 26 Mad. 544.

(8) *Sokkanadha v. Sokkanadha,* 28 Mad. 344.

(9) *Anant Ram v. Channu Lal,* 25 All. 378.

(10) *The Collector of Estate Duty v. Oh Khay Beng,* (1931–1932) F.M.S.L.R. 108.

(11) *Fakirchand Motichand v. Motichand Hurruckchand,* 7 Bom. 438.

(12) *Girdharee Lall & anor. v. Kantoo Lall,* 1 I.A. 321.

(13) *Suraj Bunsi Koer v. Sheo Proshad Singh,* 6 I.A. 88.

(14) *Nagindas v. Mohamed,* 46 Bom. 312.

(15) *The Official Assignee of Madras & anor v. V.P.L.R.M. Palaniappa Chetty,* (1918) 41 Mad. 824.

APPLICATION UNDER THE ESTATE DUTY ENACTMENT.

B. J. P. Joaquim for plaintiff. Effect must be given, if possible, to specific acts. The entries in the books were specific acts indicating a gift to or constituting a declaration of trust in favour of the Charities. This case differs from the case of *P.R.A.L.M.M.*[1]. In that case the entries were in the books of a one-man business and the Charity was a one-man charity. In the present case the business belonged to three persons or families any one of whom could enforce the gift or trust as against the others. Furthermore the Charities did not belong solely to the business of R.M.A.T.M. Another firm was interested therein.

The vilasam "M.R.M.M." was not that of the deceased, but represented the Joint Hindu Family constituted by the deceased and his son. The share in the business "R.M.A.T.M." standing in the vilasam of "M.R.M.M." therefore belong to this family, and on the death of the deceased only his interest in this share was dutiable.

E. D. Shearn for defendant.—The Originating Summons is not in the correct form. The facts should be set out therein. Rules 1, 4 and 5 should be construed in the same way as the English Rules 1, 3 and 4. *See Green's* Death Duties 727/8; *In re Scott*[2]; *In the matter of the duty on the estate of Col. G. A. Vernon*[3].

As regards Joint Hindu Family the evidence establishes that the deceased and his son were undivided and that the share of the deceased in the partnership was Joint Family property. Nevertheless the law is that estate duty is payable on the whole value and not on one half. The share stood in the name of the deceased. The share could not stand in the name of the joint family. In the Federated Malay States the law of partnership is governed by the Contract Enactment. *See* sections 239, 247 and 248; 6th Edition *Pollock & Mulla,* p. 678; 8th Edition *Mulla's* Hindu Law, p. 261; *Grande Gangayya v. Grande Venkataramiah*[4]; *R.M.PL.N. Nachiappa Chettiar v. K. AL. KR. Karuppan Chettiar & others*[5]. An infant's contract is void. *Mohori Bibee v. Dhurmodas Ghose*[6]. The deceased's son was an infant at all material times. The deceased held the share in trust for the Joint Family consisting of himself and his son. *See Annamalai Chetty v. Murugasa Chetty*[7]. Or he held his share as a partner and there was a sub-partnership consisting of himself and his son. In the latter event deceased was the sole beneficial owner and the son had contractual rights against the deceased. But on the assumption that deceased was a trustee either the whole share passed to the deceased's legal personal representatives—*See* Estate Duty Enactment, section 4 (i)—or the whole share must be deemed to be included in property which passed because deceased was competent to dispose of it—*See* Estate Duty Enactment, section 5 (i).

Firstly the share actually passed to deceased's personal representatives. Partnership dissolved on death—Contract Enactment, section 253 (j); *Sokkanadha v. Sokkanadha*[8]. No evidence of continuation of partnership with son. If surviving partners would not go into accounts administrator of deceased must bring suit. 10th Lindley on Partnerships, pp. 711 and 712. If account against deceased partner, surviving partners could have administration of deceased partner's estate. Deceased partner's self acquired

property liable to the surviving partners. On dissolution share of deceased partner does not pass by survivorship. The partnership is terminated and certain legal consequences ensue, one of which is that deceased partner's personal representatives are entitled to an account. There was no privity of contract between the members of the family and the other partners. *Grande Gangayya v. Grande Venkataramiah*[4] already cited; *Anant Ram v. Channu Lal*[9]. Trust property passes on death of sole trustee Probate Enactment, section 50. The share held by the deceased can only be got in by the legal personal representatives 8th Edition *Dymond*, p. 4; *The Collector of Estate Duty v. Oh Khay Beng*[10].

Secondly the deceased in his lifetime could have assigned his share to a stranger without the consent of his partners. He would have received the consideration in trust for himself and his son. Nothing in Contract Enactment or law of Federated Malay States to prevent assignment—Estate Duty Enactment, sections 3 (i) and 5 (i). In the Federated Malay States he was absolute owner of the share. A father being a managing member of a family is competent to dispose of the family property. *Fakirchand Motichand v. Motichand Hurruckchand*[11]; *Girdharee Lall & another v. Kantoo Lall*[12];*Suraj Bunsi Koer v. Sheo Proshad Singh*[13]. *See* also 8th Edition *Mulla's* Hindu Law, pp. 271 and 274 which have been accepted by Mr. Narayan as authority. *Nagindas v. Mohamed*[14]. Court can hold that property passed on death or that it must be deemed to have passed because deceased was competent to dispose of it. As regards the latter point this case is distinguishable from Oh Khay Beng's case. In that case the deceased partner was not a manager of a Joint Hindu Family but held the trust property in trust for his partners. He had no discretion as to sale to pay his own debts. In the Federated Malay States as in England trust property is caught in the net of sections 4 and 5 but some trust property is excluded by reason of section 6. There is no declaration of trust in this case. The trust cannot be proved.

As regards the interest of the Charity this entails a consideration of whether the Charity was really a partner or entitled to a share of the partnership capital.

(**Gordon-Smith, J.**—I do not think there is sufficient evidence to establish the existence of the charity.)

Shearn.—In that event I will shorten my argument. The only evidence is a book entry. No payments were made to charity. No communication to the Charity of the gift. This was held to be insufficient in the case of the *State of Perak v. P.R.A.L.M.M. Muthukaruppan Chettiar*[1]. No declaration of trust was intended. No declaration of trust within section 6 of the Estate Duty Enactment. No completed gift because no communication to donee and no delivery. Possession and enjoyment were not assumed by donee within the meaning of section 5 (iii) of the Estate Duty Enactment. The only payments made were payments to a local charity for the benefit of the partnership. The charity was not shewn to have had any legal existence.

As regards the suggestion of deduction of the alleged debt due to the Charity the answers are:

(1) The charity did not have legal existence.

(2) The debt is payable to a foreign creditor, and no evidence has been given as to the deceased's property in India. See Estate Duty Enactment, section 17 and **Green's** Death Duties, p. 210.

(3) No evidence of consideration for the debt. See 8th Edition **Dymond's** Death Duties, pp. 123/4.

Gordon-Smith, J.—Various questions arose for determination under this Originating Summons, which was filed under rule 4 of Court Rules regulating the procedure in applications to the Court under section 37 of the Estate Duty Enactment. (These rules are to be found in Vol. I of Allen's Rules at page 82, under the heading "Courts").

The main point at issue is the amount of estate duty payable in consequence of the death of one Chinnah Meyappa (hereinafter referred to as "the deceased") whose personal vilasam was M.R.M.M. but who was a member of the Chettiar Firm of R.M.A. T.M. carrying on business at Ipoh.

The founder of this firm was R.M.A.T.M. Ramasamy Chettiar who started the business a good many years ago and who died in 1916. Business was carried on at Ipoh under the vilasam of R.M.A.T.M. At his death Ramasamy left three sons surviving, namely, Periya Meyappa, the deceased, and Supramaniam.

Periya Meyappa, whose personal vilasam was R.M.M., died in 1919, leaving a son Ramanathan. Supramaniam whose personal vilasam is R.M.S.P. is still alive in India and he also has a son (a minor) named Ramasamy, and the deceased whose personal vilasam was M.R.M.M. also left a son Meyappa, who is also a minor. It will be seen that each son of Ramasamy the founder, adopted the R.M. of the founder's vilasam adding thereto a personal letter, in the case of Periya Meyappa, an M, and in the case of Supramaniam S.P., and the deceased, as his name was also Meyappa, both added and prefixed M to

the R.M. of his father, probably to make a distinction between his vilasam and that of his elder brother Periya Meyappa. This extra M prefixed was probably part of the vilasam of his grandfather who was also a Meyappa.

I might here mention that the plaintiff who is also a Meyappa and son of a Meyappa, is quite distinct to and, I believe, is no relation of this family.

In 1931, apparently, disputes had arisen between the sons and according to the deposition of A.T.R.M.S. Supramaniam Chettiar, he and another Chettiar settled the matter by directing that the share capital that stood in the vilasam R.M.A.T.M. should be divided and separately entered in the names of the three sons. Apparently this was done and there was a partition. Of course, at this time, Periya Meyappa was dead, but that does not affect the points raised.

The deceased died intestate at Karaikudi, India, on the 6th January, 1936.

According to the Estate Duty Affidavit by the plaintiff dated the 20th August, 1936, he put the value of the deceased's interests in the firm R.M.A.T.M. at $60,908.73¼ and on which sum he alleged estate duty was payable.

After enquiry and considerable correspondence, the Collector of Estate Duty by notice dated the 19th June, 1937, assessed the value of the estate of deceased at $146,186.43½ on which duty of $8,771.19 was payable.

Being aggrieved thereat, and being an aggrieved accountable person within the meaning of section 37 (i) of the Estate Duty Enactment, the plaintiff accordingly gave the Collector notice, together with a statement in writing of the grounds of such application, of his intention to apply to the Supreme Court, in accordance with the aforesaid Rules of Court.

In accordance with rule 3, the Collector by letter dated the 28th July, 1937, notified the plaintiff's solicitors that he maintained his decision.

The Originating Summons was filed on the 14th October, 1937. Strictly speaking this was out of date, as under rule 4, such Originating Summons should have been issued within one month of the Collector's rejection of the application to him.

At the commencement of the hearing, the construction to be placed on rule 5, was argued and for convenience of reference, I set this out verbatim—

> "5. Subject to the provisions of these rules the applicant shall not in his application state or at the hearing be allowed to rely upon any grounds of application not specifically set forth in the statement of the grounds of his application".

It is obvious that the draughtsman of these rules has taken as a precedent the English rules of the Supreme Court (Finance Act) 1895 (for which *see Green's* Death Duties, p. 727). The rule 5 quoted above is taken from rule 4 of the English rules but why it was thought necessary to depart therefrom and substitute, in rule 4, an application by way of Originating Summons for a petition, and why the application to the Collector could not, in rule 1, have been termed an appeal, it is difficult to conceive. A petition and not an Originating Summons is the more appropriate remedy for an application to Court of this nature. Had these substitutions not been made, it would have been easier to interpret rule 5, where in the 2nd line the word application must, I think, refer to the Originating Summons and in the last line it must refer to the application to the Collector made under rule 1.

Putting this construction on rule 5 it would then read as follows:—

> "Subject to the provisions of these rules the applicant shall not in his Originating Summons state, nor at the hearing thereof be allowed to rely upon any grounds of appeal not specifically set forth in the statement in writing of the grounds of his application under rule 1".

Counsel for the plaintiff applied to amend his Originating Summons which set forth grounds which had not been included in the statement in writing to the Collector and I allowed the amendment, but subject to the right of Counsel for the defendant to invoke rule 5, if necessary.

A further matter which was disposed of was the dispute as to the valuation of the lands, the value of which the Collector had assessed at $82,300 as compared with $63,250 by the plaintiff, a difference of $19,000. Subsequently the plaintiff had obtained a valuation by a sworn appraiser which amounted to $77,800, a difference of only $4,500 from the value originally fixed by the Collector and on being informed of this sworn appraiser's valuation, the Collector immediately accepted the latter's figures. The matter, therefore, only arose in regard to the costs of the valuation which, in view of the evasive and unhelpful attitude adopted by or on behalf of the plaintiff in supplying information, which it was his duty to supply, I ordered the plaintiff to pay in any event.

It would be convenient here to set out what were the grounds of application given by the plaintiff in accordance with rule 1.

"The applicant contends that the decision of the Collector was erroneous for the following grounds:

1. **Share of the deceased in R.M.A.T.M. Firm.** It is contended that the Collector was wrong in holding that the deceased had one-third (1/3) share in the moneylending firm of R.M.A.T.M. Ipoh. The deceased at the time of his death was the manager or managing senior male member of a Hindu Joint Family consisting of himself, the deceased and his infant son Meyappa Chettiar. The said Hindu Joint Family held 93/320 share in the said firm of R.M.A.T.M. It is contended that on the death of the deceased only one-half of the said 93/320 share passed by survivorship to his son Meyappa Chettiar and that estate duty is payable on one-half of the said 93/320 share. The deceased at the time of his death was domiciled in Karaikudi, South India, and was governed by the Mitakshara School of Hindu Law.

2. (As to valuations. Already disposed of).

3. With regard to the debt of $20,300.41 due by the R.M.A.T.M. Firm to "Pasumadam Charity" carrying on business as a partner of the said firm of R.M.A.T.M. at Ipoh, it is contended that the Collector was wrong in disallowing this sum as a liability of the said firm of R.M.A.T.M.

4. It is contended that the sum of $2,050 contributed by the "Pasumadam Charity" towards the share capital of the said firm of R.M.A.T.M. should be treated as a liability payable out of the assets of the said firm".

These are the grounds and the only grounds of objection that the plaintiff can rely on, in accordance with rule 5.

There are, therefore, really only two main issues, if I understood Counsel for the plaintiff correctly, and which are as follows:—

> Under ground 1.—As to what was the share of the deceased in R.M.A.T.M. which passed on his death, and whether that share was held jointly by him with his son as Joint Hindu Family Property.
>
> 2.—As to whether the "Pasumadam Charity" was a partner in such firm and as such, or otherwise, was entitled to the sum of $20,300 being the accretions or profits accruing to the Charity on the capital sum of $2,050 contributed by the Charity.

The evidence on these and other points was vague and scanty. It consisted of that of a clerk in the firm R.M.A.T.M. who produced a Ledger and Day Book of 1934, containing certain entries, and that of three witnesses taken on Commission in India. Mr. Narayan, a local Advocate, also gave expert evidence on Hindu Law.

A.T.R.M.S. Supramaniam, the principal witness giving evidence on Commission, was a cousin of Ramasamy, the founder of R.M.A.T.M. He deposed as to the earlier relationships and the foundation of the firm by Ramasamy and to having at times seen the accounts of the firm when the various agents brought them to India to be gone into by the principals. According to him, he and another Chettiar arranged the partition between the three sons in 1931 and directed that the share capital that stood in the vilasam R.M.A.T.M. should be divided and separately entered in the names of the sons, each being $4,650 and that "Tirukkalar Pasumadam Nandavanam, etc. has $2,050 in the said share capital" and that the amount of the original capital of the Pasumadam Charity was contributed by Ramasamy, the founder. He only knew as to this Charity gift from what Ramasamy had told him and stated that there was no gift by deed or declaration of trust in respect thereof. Apparently this Charity had been started jointly by Ramasamy and another family (A.T.L.A.T.) and it was still going on, the Deity being Panjathavaneswarar and the Ambal being Amirthavalli, the expenses amounting to $2,000 per annum. He stated that the three sons had no separate moneys of their own, and also explained the various vilasams. P.S.R.M. Ramasamy also gave evidence on Commission about the existence of the Charity and having been to the festival but otherwise his evidence is mainly hearsay and does not carry the matter any further.

Similarly R.M.A.T.M. Ramasamy was the third witness on the depositions and he also had been to a festival at the Charity and said that the sons, after the partition, had told him that the capital of the Charity was $2,050.

A clerk of the firm gave evidence and produced the books. These were a Ledger (Ex. P-8) commencing in September, 1934, and a corresponding Day Book Ex. P-10. Certified translations of various entries were also put in, which I will refer to later. He stated that he had taken part in Visagam festivals at the local Hindu Temple at Ipoh which was dedicated to the Deity Dandayuthapani (a different Deity to Panjathavaneswarar); that all local Chettiars contributed to this Festival; that the calculation is made at the rate of 25/32nds per $1,000 of the balance set aside in their books for charity purposes. The contribution was made by the manager as a matter of course, who would report it to his principals in due course. He stated that the two exhibits (at pages 103 and 135) were the only accounts referring to Charities and that they referred to the only charitable payments made by the firm.

I will now refer to the book entries.

The first page of the Translation Ex. P-5 is taken from page 51 of the Ledger (Ex. P-8) and purports to shew the firm's share capital as on 10th September, 1934.

The translation reads:

> "Credit; share capital of Thirukala Cow House God Panjathavaneswa-

rar and Goddess Amirthavalli Ambal's Cow Home Thirukalar ..	$ 2,050
Share capital of Karaikudi R.M.M.	4,650
Share capital of M.R.M.M. ..	4,650
Share capital of R.M.S.P.	4,650
Total credit, on this date as on 25th Avani in the year Bava (10-9-34)	16,000"

This is fairly straight-forward and tends to support the contention that the three brothers each held 93/320th of the share capital as set out in paragraph 1 of the statement in writing under rule 1. It also supports the contention that the $2,050 credited to the Charity was the balance of the firm's capital, namely 41/320th.

Page 2 of Ex. P-5 is a translation of page 71 of the Ledger and purports to be "Karaikudi M.R.M.M. current debit and credit account".

As at the 10th October, 1934, there is a credit entry "Credit through old account with interest at

1/16 for current account $110,466.20".

There are three debits and one credit for interest and at the 15th April, 1937, a balance of $117,391.33 is carried forward, and on 28th June, 1938, the balance is $120,827.88.

Exhibits P-6 and P-7 are translations of somewhat similar entries in respect of R.M.M. and R.M.S.P., being the vilasams of the two other brothers, shewing credits of their shares.

On pages 4 and 5 of Ex. P-5 is a translation of the "Thirukalar Cow Home Current and Debit account".

It starts off as at 10th October, 1934, with a debit entry of $7,628.82 brought forward. There are then five credit items of dividends on some Rahman Hydraulic shares and the account is closed off with:

"Immediate credit—principal and interest—through subsequent account as on 1st Chittirai in the year Iswara (13-4-1937)	$7,900.90".

This amount is carried forward as a debit, there is then a credit of a further dividend on the shares and finally a credit item of $6,030 upon the sale of the shares.

On pages 6 and 7 of Ex. P-5 there is a further account of this same charity and similarly entitled. It details a credit brought forward on the 8th October, 1934, of $19,476.85 and shews a debit item on the 16th April, 1935, of $15.49 as follows:

"Debit, for worship during Vaikasi Visagam in the local Dandayuthapani temple, charity charge entered on $19,825 at the rate of 25/32 per 1,000, as on 3rd Chittirai in the year Uva (16-4-1935)	$15.49".

On the 3rd May, 1936, there is a similar debit for a slightly enhanced amount, and similarly on the 23rd April, 1937, the rate then being 25/32nds per $1,000 on $21,185.

On the 15th April, 1937, the credit through the previous account is shewn as $21,172.59.

These debit entries bear out the clerk's evidence as to the subscriptions to the local charity at Vaikasi Visagam being paid out of this charity at the established rate.

The Day Book merely confirms the Ledger entries.

So much for the evidence before me, which as I have said, is scanty and one cannot help but wonder why the Ledger of 1931 was not produced or evidence brought as to the credits of share capital of the three brothers at the time of the partition in 1931. Nor did R.M.S.P. Supramaniam give evidence although he is now the sole survivor of the sons of Ramasamy, the founder, but he swore an affidavit setting forth a genealogical tree of the family. Nor did the plaintiff himself give evidence and he was the agent of the firm at the time the application under rule 1 was made to the Collector, but I believe he has since returned to India. There is no evidence either that the capital with which Ramasamy founded the firm was separate moneys or Joint Hindu Family property. However, no objection was taken to the assumption that it was Joint Hindu Family property nor to the fact that there was no formal proof of the birth of Meyappa (minor) who is understood to be a boy of 11 or 12 years of age.

I am, however, assuming, for the purposes of this decision, that the capital with which Ramasamy founded the firm of R.M.A.T.M. was Joint Hindu Family property and that the business, on his death in 1916, descended to his three sons and that they then became the Joint proprietors thereof as Joint Family property which remained as such until 1931 when, by mutual agreement, there was a separation or partition. This partition resulted in the formation of three separate branches of the family, namely (a) Periya Meyappa's branch with the vilasam of R.M.M. represented by Ramanathan, as Periya Meyappa was then dead; (b) Chinnah Meyappa's branch with the vilasam M.R.M.M., and (c) Supramaniam represented by the vilasam R.M.S.P. and that thereafter these three branches separately carried on the previous Joint Family business of R.M.A.T.M., in partnership, by the means of agents. There is no evidence that either Periya Meyappa or

Supramaniam ever took an active part in the management.

It will be more convenient to deal firstly with the issue as to the Charity being a partner, etc. The facts in regard to this so-called Charity are somewhat similar to those in the case of *The State of Perak v. P.R.A.L. M.M. Muthukaruppan Chettiar*[1] in which it was held that there was no effective gift to a charity merely by transfer of moneys into the name of a charity in the books of a Chettiar Firm. I need not repeat the remarks of the Chief Justice, Straits Settlements, in so holding, as the facts in the present case are even stronger against such a transfer being effective as a gift.

There is no evidence that the alleged gift was ever communicated to the Charity nor that it took possession of or ever enjoyed any of the fruits of the gift. There were no payments made to the Charity and in fact payments out of the fund were made to an entirely separate and distinct local Charity at Ipoh. There is no evidence that there are any trustees of the Charity or as to its constitution or that it has any corporate existence. The only evidence in regard thereto is that of the three witnesses who gave evidence on Commission and which is extremely vague and nebulous, and of the account opened in its name in the books of account. On the other hand, the clerk of the firm in referring to the contributions to the local Ipoh charity out of this fund stated that all Chettiars contributed to this festival at the rate of 25/32nds per $1,000. "This calculation is made on the balance set aside in our books for charitable purposes. The Manager of a Chetty Firm makes this contribution as a matter of course", and later he said, in reference to pages 103 and 135 of the Ledger that they were the only accounts referring to charities and they referred to the only charitable payments made by the firm.

It seems clear that one of the objects in the opening of an account in the name of this Charity was for the purpose of having a convenient fund out of which to make any charitable contributions if and when desired, or to any charity at large. In my opinion it is evidence only of a mere revocable expression of opinion.

The next point is, was there an effective trust of share capital of the firm, in favour of the Charity? The answer is clearly provided in the negative, by section 6 of the Estate Duty Enactment. There has, in fact, been no suggestion of a trust created either expressly or by implication and there is certainly no evidence upon which such a contention could be supported.

Next, and this is contended for by implication in Ground 1 and expressly by Ground 3 of the Notice of Objection, the point is, was the Charity a partner in the firm? Again, the answer must be answered in the negative. Section 239 of the Contract Enactment (Cap. 52), is the same as section 239 of the Indian Contract Act and defines "Partnership" as follows:

> " 'Partnership' is the relation which subsists between persons who have agreed to combine their property, labour or skill in some business, and to share the profits thereof between them".

There is no evidence, in the first place, of the Charity coming within the definition of "person" in the Interpretation Enactment and secondly, there is no evidence whatsoever of any agreement between persons, and, to quote *Pollock* and *Mulla* (6th Edition) on the Indian Contract Act at page 669 in commenting on this definition—

> "Under the present section there can be no doubt that agreement to share profits is essential to the constitution of a partnership".

Moreover (*see* section 249), a partner is liable for partnership debts and I imagine that the Charity in India would be rather surprised if it found itself liable for the partnership debts of a money-lending firm in Ipoh, of which firm's existence it may know nothing. There is not a scintilla of evidence as to any agreement by Ramasamy, the founder, or by anybody else subsequently, with the Charity, to share profits or to have any interest whatever in the firm.

Lastly, on this part of the issue, I come to Ground 4 of the Notice of Objection which contends that the original sum of $2,050 contributed by the Charity is a liability payable out of the firm's assets. In other words, that this sum should have been allowed in the Collector's assessment as a liability, with other liabilities allowed.

In the first place there is no evidence whatsoever to support the contention expressed above that this sum was contributed by the Charity. In fact what evidence there is, is all the other way.

To substantiate this allowance or deduction, the plaintiff must bring the liability within section 17 of the Estate Duty Enactment. Under paragraph (a) of section 17 (i) the amount is not allowable as a debt unless it is a debt *bona fide* incurred by the deceased for full consideration for the deceased's own use or benefit. It is obvious that this cannot be done and even if this could be done, the liability could not be allowed in the first instance owing to sub-section (2) of this section, as the Charity is resident outside

the Federated Malay States. Moreover, who would give a receipt for the debt in sufficient discharge thereof?

The plaintiff has therefore entirely failed to discharge the onus of proof on him in respect to this sum.

I now come to the more important issue, namely that contained in paragraph 1 of the Notice of Objection.

It is contended on behalf of the plaintiff that Estate Duty is payable on the half only of the share held by the deceased in the firm, that is to say on ½ of 1/3, by reason of the fact that this 1/3 share belonged not to the deceased himself solely (on which basis the Collector of Estate Duty assessed the duty), but to the deceased and his son jointly as Joint Hindu Family property.

The reply to this contention was that even if the share of the deceased was to be considered as Joint Hindu Family property, Estate Duty on the whole 1/3 share was payable in accordance with the Estate Duty Enactment.

The Collector having made his assessment on the basis he did, the burden of showing that he was wrong in so doing is upon the plaintiff, and therefore, in the first instance there is the obligation to prove that the 1/3 share was Joint Hindu Family property at the time of deceased's death.

Mr. Narayan gave expert evidence of Hindu law of the Mitakshara School and although *Mulla's* Principles of Hindu law does not purport to be a book coming within section 38 of the Evidence Enactment, yet Mr. Narayan confirmed certain propositions quoted to him out of it and I see no reason for not accepting both his statements and *Mulla's* as authoritative on various points which arose. The Mitakshara law prevails amongst the Chettiar community and generally speaking, the normal state of a Hindu family is joint and continues joint until the contrary is proved. Similarly, there is a presumption that the property of a Joint Family is also joint, until the contrary is proved, but this does not mean that there cannot be separate property separately possessed and owned, to which the attributes of Joint Family property do not attach.

As regards Ramasamy, the founder of R.M.A. T.M., Mr. Narayan said that the initial presumption would be that his money and property was ancestral, i.e., Joint Family property, as the words "ancestral property" and "Joint Family property" are synonymous.

Immediately prior to his death, Ramasamy and his three sons would therefore, so far as Hindu law is concerned, jointly own the business, equally and *per capita* as regards themselves but *per stirpes* as regards sons of the three brothers. On Ramasamy's death his interest in the Joint Family property would pass by survivorship to his three sons and either of them could demand a partition of the Joint Family property. And similarly on the death of Periya Meyappa, his son Ramanathan would step into his father's shoes. As we know, partition was demanded and effected in 1931 but the business would continue to be held as Joint Family property but there would be three Joint Families entitled to it, i.e. (a) Ramanathan as representing his father R.M.M. Periya Meyappa, (b) M.R.M.M. Chinnah Meyappa and his minor son Meyappa and (c) R.M.S.P. Supramaniam and his minor son Ramasamy.

Thereafter the business continued to be carried on as Joint Family property until Chinnah Meyappa's death in 1936 and it is as a result of his death that Estate Duty has been claimed on the value of a 1/3 share in such business passing on such death to the minor son Meyappa.

The question then arises, did such 1/3 share pass, and if so, who owned such share and to what extent.

It is contended for the plaintiff (*see* Ground 1 of the Notice of Objection) that this share was owned jointly as Hindu Joint Family property by the deceased and his minor son Meyappa, and that on the death of the father ½ of this share only passed by survivorship to the son and that consequently Estate Duty is payable on the value of the ½ of such share only.

In other words, (a) was this share held jointly by the deceased and his minor son as contended for by the plaintiff, or (b) was it held by the deceased as trustee for himself and his son, as contended for by the defendant?

As regards (a), I have already shown that this share was credited in the firm's books to the personal vilasam M.R.M.M. of the father and there is no evidence whatsoever to shew that the son had any interest in it at all, apart from such interest as he may have possessed by virtue of being a member of a Hindu Joint Family.

I would also emphasize the fact that he is a minor, and although a minor may be admitted to the benefits of a partnership (*see* sections 247 and 248 of the Contract Enactment), there is no evidence of any consentient act either on his part or on that of

the other partners, admitting him to the partnership. In this connection I would quote the Judgment of Wallis, C.J., in *The Official Assignee of Madras & anor. v. V.P.L.R.M. Palaniappa Chetty*[15] at page 830:

> "The interest of a minor in a Joint Hindu Family business, whether existing at the date of his birth or founded during his minority, is acquired by virtue of his belonging to the family and does not depend on any agreement on his part or on his admission by the other members of the family to the benefits of the partnership"

and Spencer, J., in the same case says:

> "But as I observed in **Gangayya v. Venkataramiah**, a definite and conscious act on the part of the other partners is needed for admitting a minor to the benefits of a partnership".

It seems clear therefore, that the minor's interest, whatever it was, was acquired by virtue of being a member of a Joint Hindu Family and it is necessary to enquire the extent of that interest and of his father's interest, which passed to him on his father's death.

I have already stated that the property in the business firm of R.M.A.T.M. must be held to be ancestral or Joint Family property. The share of the deceased was 1/3 and his minor son, whether born prior to or subsequent to the partition, acquired an interest equal, to some extent, with his father in this 1/3 share. Accretions to such share possess the same characteristics.

The father, however, has, as head or Karta of the family, certain exclusive rights over such property. He can sell or mortgage it to discharge debts, even debts contracted for his own personal benefit, and similarly such property may be seized in execution for such purpose. He is in sole control of the income and expenditure and he is only liable to account for assets received, on a partition. He can alienate the property without the consent of others interested, provided such alienation is for a legal necessity or for the benefit of the estate. He may make gifts of the property within reasonable limits either charitable or for pious purposes. All these acts are binding on the interests of other members of the family, but such other members have no such rights, nor are they entitled to accounts, except on a partition. The interest of a son cannot be defined in terms of shares in the property and it is indefinable. Such interest may be decreased or increased by the birth or death of other sons. It is clear, however, that whatever interest the father has in the Joint Family property, such passes on his death to his son or sons and just as it is impossible to define, in terms of shares, what interests the son or sons have, so, as between him and his sons, it is impossible to define, in terms of shares, what interest the father has, which passes on his death to his son or sons.

Now, I have shown that the father of a Joint Hindu Family is entitled to dispose of the joint property under Hindu law appertaining to Joint Hindu Families and not only so, but he is a person competent to dispose of property as described by section 3 of the Estate Duty Enactment.

In this connection it is relevant to refer to section 5 (1) of the Estate Duty Enactment which says that property passing on the death of a deceased shall be deemed to include "(1) Property of which the deceased at the time of 'his death was competent to dispose' ", and I ask myself the question "What property?" and the answer appears to be the 1/3 share in the firm of which he was competent to dispose. Apart from this, however, I think one must also hold that during his life the deceased must be deemed to be a trustee of this 1/3 share for himself and his son or sons; and not that this 1/3 share was held jointly by himself and his son, in definable shares. The son or sons are not competent to dispose of their shares or interests and they have no powers whatsoever in relation to their shares or interests except to demand a partition. If such partition is demanded and acceded to, then the share held by the head of the family in trust for himself and others is sub-divided into definable shares and this is what was done by the sons of Ramasamy the founder.

Assuming, as I have done, that the father is a trustee for himself and his sons, then also the property is deemed to pass on the death of the father unless such trust property has been dealt with as set out in section 6 of the Enactment, and it has not been so dealt with.

For the above reasons I am therefore satisfied that the manner and the amount in which the Collector has assessed the estate duty payable is correct and that the plaintiff has failed to shew it to be otherwise.

The application is therefore dismissed with costs.

[APPELLATE CRIMINAL JURISDICTION]
MURRAY-AYNSLEY, J.
May 20, 1940.

TONG KE KEE vs. PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 55 of 1940]

Criminal Procedure Code (Cap. 6), section 422 —Irregularity—Illegality.